No. 87-1009

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JOSEPH F. SPANIOL, JR.
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IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1987

SCHUBERT & SALZER
MASCHINENFABRIK AKTIENGESELLSCHAFT
and
SCHUBERT & SALZER MACHINE WORKS, INC.,
Petitioners,

v.

SPINDELFABRIK SUESSEN-SCHURR,
STAHLECKER & GRILL GmbH,
HANS STAHLECKER AND FRITZ STAHLECKER,
Respondents

REPLY
TO OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Allen Kirkpatrick, III
Counsel of Record
For Petitioners
William T. Bullinger
Cushman, Darby & Cushman
Eleventh Floor
1615 L Street, N.W.
Washington, D.C. 20036
Telephone (202) 861-3000

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PETITIONERS' REPLY BRIEF

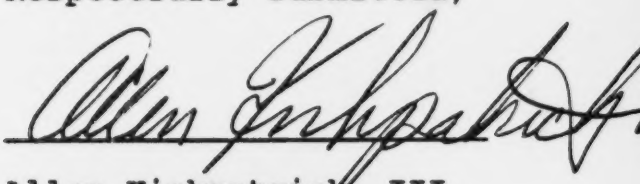
Respondents in their brief raise a new argument not found in the opinion of the Court of Appeals hence this reply brief, Supreme Court Rule 22. In its opposition brief at page 7 Suessen introduces an argument about the "significantly different" finding of the district court below (see page 146a of the appendix to this petition). There the district court found that the inventions of '011 and '946 patents are "significantly different". Whether or not that was a clearly erroneous finding (which it is) was not addressed by the appeals court below. Instead, the latter just said that there could be no implied license under '946 because '011 was licensed before respondent Suessen purchased '011. The appeals court below never dealt with the sameness of the '011 and '946 inventions.

Petitioners Schubert do not suggest that this Court deal with the sameness facts or issue. But petitioner Schubert asks that the appeals court below be corrected about the law of implied licenses, so that the appeals court below may re-decide the case based on the correct law. Petitioners submit that they are entitled to a circuit court of appeals review applying the correct law on implied licenses to the facts of record rather than an avoidance of the facts and an erroneous application of the law.

It is notable that in the closing sentence of respondents argument at page 9, respondents concede that petitioner have a right to practice the licensed '011 invention.

If this Court will inform the court below that the '946 patent in suit is impliedly licensed to petitioners to the extent necessary to permit petitioners to operate under the '011 patent, than petitioners will be afforded their day in the appellate court. The petition should therefore be granted and in due course the case be remanded to the appeals court to correctly apply the law of implied license and re-decide the case accordingly.

Respectfully submitted,



Jan. 15, 1988

Allen Kirkpatrick, III
Counsel of Record
for Petitioners
William T. Bullinger
Cushman, Darby & Cushman
Eleventh Floor
1615 L Street, N.W.
Washington, D.C. 20036
Tel.: (202) 861-3000

SERVICE

Three copies of this reply have been served upon counsel for plaintiffs - appellees below, respondents herein, first class mail postage prepaid, addressed as follows:

Charles B. Park, III, Esq.
Michael D. McCoy, Esq.
BELL, SELTZER, PARK & GIBSON
P.O. Drawer 34009
Charlotte, NC 28234

Fletcher C. Mann, Sr., Esq.
LEATHERWOOD, WALER, TODD and MANN
P.O. Box 87
Greenville, SC 29603

January 15, 1987

Allen Kirkpatrick, III
Counsel of Record
for Petitioners
William T. Bullinger
Cushman, Darby & Cushman
Eleventh Floor
1615 L Street, N.W.
Washington, D.C. 20036
Telephone: (202) 861-3000